

## Nuisance Plant Committee Meeting

November 6, 2008

Delaware Department of Agriculture

4:00 p.m.

### **Attendance**

Faith Kuehn  
Rob Naczi

Jay Windsor  
Paul Cartanza

Geri McClimens (transcriber)

Faith – As you know you all have been duly appointed. First of all in terms of introductions everybody knows everybody. Geri McClimens is the secretary for Plant Industries section and she's taking notes and recording the meeting because under the laws of Delaware this is a public meeting so the transcript of the meeting has to be posted on line. Just too quickly review the Nuisance Plant Law that's in your package of materials here Title 3 Chapter 27 the law states that a nuisance plant list is designated by the Secretary of Agriculture with the advice of the Nuisance Plant Committee. The Nuisance Plant Committee has five members; the one member is not here, Bill McAvoy. He has sent some of his comments which are attached. The Nuisance Plant Committee shall meet a minimum of one time per year so this is our meeting for 2008. That's the highlight of the law at this point and time. The next thing you'll see in your packet is Official Designation, Title III, Part II, Chapter 27 Nuisance Plant; this is the existing "quote" Nuisance Plant List. Our last meeting was in March, I believe of 2007. Yes, March of 2007 was our last meeting and then after that.

Paul – We met in Milford.

Faith – We held a Public Meeting We decided not to put Porcelainberry on there and left bamboo on there. If you would excuse me for a minute I have to go get that document because that is an important thing to look at.

Paul – I think we discussed it and I don't think we ever said nay or yea because we left Milford. I don't know whether I dropped the ball or I needed to talk to someone else because I know we talked and they were very stressful about it. They drove me around and they showed me all the different areas and it's a mess.

Rob – My recollection the fellow, Bill Pike, he had partitioned us and then we had our meeting and Paul and you offered to meet with him first hand. I remember I couldn't make that meeting.

Jay – And either could I.

Rob – And after that I don't know what happened.

Paul – I think we were either supposed to meet again or talk about it because we kind of left it holding as we weren't really sure, without actually physically seeing the problem, which I think it is a problem. I feel bad because I don't know if I dropped the ball or not.

Faith – I remember what happened. We had the Nuisance Plant Meeting. I think it was after that and the way it is written you have to knowingly plant and cultivate it. The way the law was written we really couldn't enforce Porcelainberry because people aren't knowingly planting Porcelainberry. The birds are doing it but the people aren't.

Rob – They used to do it but now days they're mostly not.

Faith – Reading how the law is written we could put Porcelainberry on there but we'd never be able to enforce it. Let me go get that other folder, I apologize for this. The Nuisance Plant Committee was held on August 14' 2007. I think the meeting in Milford was June.

Jay – It was later.

Faith – This was after that and we talked about bamboo renew or drop and then Porcelainberry request from Milford. That goes back to 2006. I have all these things from bamboo. I don't want to waste a lot of time here.

Paul – Make sure we get it right. That's number one.

Faith – I thought I had to have Secretary Scuse sign this again.

Paul – I guess Milford has never called us back and questioned this or did we...

Faith – I believe I gave the message to them or to Bill Pike. I informed him of the decision and encouraged him to do is to make some kind of city ordinance as far as Porcelainberry is concerned. I remember when we talked to him at the time he said that the city laws were really not effective enough. So we really went round in a circle but I said it really wasn't appropriate for the plant law. Geri, make a note to yourself see if we can find a copy of that August 14 meeting.

Geri – The minutes of the meeting?

Faith – Yes. after that meeting that what Secretary Scuse signed was exactly the same as this except for the date were changed. So let me go make a copy of this.

Faith –What I would like to talk about today are any additions or deletions from the current Nuisance Plant List, which is the piece of paper I passed out to you. It is all plants with the common name of bamboo with the exception of *Arundunaria gigantea* which is a native bamboo grass of some sort.

Jay – Heavenly bamboo, *Nandina*

Faith – Well that's part of the problem. I'm going to make a proposal here and my proposal is that we remove bamboo from the Nuisance Plant List and I have four reasons. Number 1 is that given the current language of the Nuisance Plant Law.

Paul – Do you have that written down where I can see that?

Jay – She's got two of them written down.

Faith – Yes, I have two of them written down. It's on this from Bill McAvoy. He's the one that can't be here. Given the current language it has been difficult to resolve cases for some species of bamboo, the kind that gets real tall and grows really fast. It's almost impossible to keep that refined because it's a very aggressive plant. What we're finding is that most of our cases are in the Rehoboth beach area and they're small lots, very sandy soil. So you got bamboo here and you've got this lot and you have a lot here, you got a lot here and one kiddy cornered there so you've there. You've got one person with bamboo and it's growing off of six different properties so what do you do, and only one of the six complain. So if you go and talk to the one complaining and you tell one of the people to stop it from growing there then the rest of the five say hey what about me. You say well you have got to file an official complaint. So they file an official complaint. Now you're dealing with six people with one patch of bamboo making six people mad. That's only one instance of how complicated this can get just from a logistical stand point. So that's reason number one. We're just talking about the practicality of trying to enforce a law, that the way it's currently written has a plant on there that is virtually impossible to confine in a small space. The second problem is, and I've discussed this in great lengths with our Deputy Attorney General, because in most of the cases when people have called up and filed a complaint right away people get a lawyer because it's their right to have bamboo or they have an issue with their neighbor and so on and so forth. This law does not really provide much remedy in the legal sense for somebody who has a case or has an issue with a person with bamboo. What our Deputy Attorney General says that in reality this is a case of trespass. This person's bamboo is trespassing on an adjoining property and this really should be handled through the court system where they have much more power to stop this than we do. They can issue injunctions, they can issue subpoenas, they can demand that x y z happens, otherwise, what can we do? We can fine them \$1000. So people say I have a \$1000 permit to grow bamboo, so what? So that's another issue on the way the law is written. Really if you want to stop that person from having their bamboo and allowing it to grow on your property but if you want to recoup the several thousand dollars that you spent to build a fence to keep that bamboo away you're not going to get it by going through the Department of Agriculture. You're going to get it by going through a lawyer. There is a remedy available for bamboo;

however, you're going to have to get yourself a lawyer and spend some time in order to go after it. The third point is that we're the Department of Agriculture and bamboo is not an agricultural problem. We're spending a disproportionate amount of time on bamboo. Right now Todd Davis is a great conscientious guy. He's trying to handle thirteen separate cases of bamboo complaints, , and handle all of your Canada thistle problems. To my way of thinking, if bamboo was the biggest agricultural problem we had that would be one thing but it's not. All of the cases that we've had are two people in a development or in the City of Rehoboth who have border issues. That's not where we should be spending our time. My recommendation is until we can resolve all the issues associated with this law we should take bamboo off the Nuisance Plant List because it's unworkable in our current situation. So that's number three. The forth problem has to do with the Nursery and Landscape Industry. Because this plant commonly called bamboo is an issue, because there are a number of plants, quite honestly have nothing to do, there not even in the same plant family as bamboo. They are completely different that are called heavenly bamboo. The people in the nursery industry are trying to be conscientious about labeling their plants. The law says if you're selling something called bamboo you have to label it. They are saying wait a minute. This is a perfectly good plant, it's not invasive and I have to put a warning label on it. People are not going to buy it. They have a really valid point so those are my four reasons why I'm proposing for the time being or maybe until the next Nuisance Plant Meeting we take bamboo off the list because this is an unworkable situation for us, in the Department of Agriculture. Maybe the law belongs in another Department in the State Government. I don't know. I don't think it belongs here.

Paul - If it doesn't have anything to do with Agriculture and that's where we're at, then it makes sense to avoid the problem and because you're dealing with all these little issues that aren't even near a farmer.

Faith – Right, and the Noxious Weed Law very specifically states in the definition of a Noxious Weed that it has a negative impact on Agricultural production. Yes it can get in the highways and so on and so forth; but the reason this law was brought into place was to protect agriculture. That's what we're about here.

Paul – That makes sense. You explained it very well.

Rob – Right, exactly, that's what I was going to tell you Faith that you did a good job on laying out why it's not working.

Jay – It's not workable.

Paul – It's not Department of Ag. It's only isolated in a development. It's not isolated next to you or me.

Faith – Right, and it is a problem for landowners in developments. A lot of things are problems for landowners.

Rob – It's a problem.

Jay – If someone asked me from a legal aspect and I'm not a lawyer; but trespass to me doesn't include plants; but trespass should certainly include plants because it includes dogs, cats, people and horses.

Faith – Because if you have a tree limb hanging over, because the lawyer went over this with me, because if you have a tree that has a limb hanging over your property and that limb comes down on the other persons property that's trespassing. It's the person's responsibility because the limb is on their tree.

Jay – But again if that person says you can't take that limb off my tree then you have to get a lawyer.

Faith – Right.

Jay – And say no I'm not going to take it off because you own the tree you're going to take it off because you're trespassing.

Faith – Right. They'll quibble over it but the lawyer will tell you that it's your tree here and all those branches that are on your property line are fine but that branch that's going over on the other property that's trespassing.

Jay – I'm glad to know that because I've had that question come up and there's always been some question about how you deal with that.

Paul – But there is people that take the property line and plant the trees, this big, it's two feet off the line and that tree doesn't get but four or five years old and it's already on the property line.

Jay – And a lot of that bamboo planted in Rehoboth was planted many, many years ago.

Faith – And it was. This is kind of an ancillary issue but it's still a problem. Who planted that bamboo?

Jay – It probably came from the same guy. There was a nursery between Milford and Rehoboth. I don't know if he ever sold bamboo or not but most of the old plant material in Rehoboth came from that nursery, I can tell you that.

Faith – The canes are very sturdy, they are very thick and they grow very well but what I meant was whose bamboo was it. We had another situation. This is not in Rehoboth. This is in a new development and it's a long, skinny piece of property. Several houses were built next to it but the farmer here didn't like the development so he introduced a number of things on his farm to make the people in the development unhappy. There was a big argument between the man on

this property and the man that built the development. Who planted the bamboo? The man making the complaint said the developer planted it; but you could see from the way it grew that it was in fact the farmer that planted it. So before you can tell somebody you have to get rid of your bamboo you have to decide who the father is. So in this case it was difficult. The person who we had thought just looking at the plant growth had planted the bamboo wouldn't admit that he in fact planted it. He blamed the developer and the developer said no I didn't. He said she said so you're throwing up your arms and you say you fight it out.

Paul – That's why you guys need to get away from it.

Faith – So anyway that's my proposal. Now Bill McAvoy wrote and of course he didn't have the benefit of our discussion. He decided to take vacation this week. The way he sees it is the current language makes it difficult to resolve cases. Can the language be revised to address all or most of the potential issues that may arise? My point is it could be but for the time being until we get that resolved let's take bamboo off the list and not just keep banging our head against the wall because we know it's not a workable situation the way it is. Pending revision of the Nuisance Plant Law we could take it off. We can put that in there as a caveat. Then he (Bill) said my staff is spending a lot of time on bamboo cases at the expense of agricultural weeds. Then he says, this suggests to me that bamboo is a much bigger problem than perhaps we had thought. That may be, I come back to the point that it is a problem but it's not the Department of Agriculture's charge to resolve this problem.

Jay – It's still a small problem compared to thistle and johnsongrass.

Paul – The way you've explained it I think it needs to be taken off because why are we wasting the Agriculture Department time when we need to be chasing other cats.

Faith – Right.

Jay – I agree with that.

Rob – I agree, too.

Paul – Do I make a motion?

Rob - The three of us are in agreement so what is appropriate here?

Faith – We can vote.

Paul – Can we say, temporarily take this off?

Faith – That's what I was going to say. The motion should be framed. What I would recommend that we remove it from the list, pending revision of the law or amendment of the

language in the law, to address many concerns that we have with enforcing the law. Until we can address those concerns with enforcing the law as it is currently written that we take it off the list.

Paul – I make a motion to do exactly what she just said.

Rob – I want to pause for just a second. If we do that, Faith, does that really take care of the fundamental problem—some of them, not all of them? I’m wondering if could there be a relatively minor revision that would bounce it back into your court. I would go even further. I’m just raising this for discussion. You had something in there about pending revision blah, blah, blah. That is the part that concerns me. I would say we remove it from the list. I’m not sure what the next step would be, whether it should be discussed with the Secretary or maybe he needs to raise the problem with the Legislature stating it’s a problem but it’s not really our problem. What I’m concerned about is if it doesn’t go quite that far, somewhere down the line it will be bounced back to you and it will remain your problem. By that point it will be entrenched.

Faith – Right.

Rob – It will probably be worse.

Faith – So, basically what you’re saying is that the fact that this is not something for the Department of Agriculture to be enforcing, will not change with a revision of fine-tuning the language of the law.

Rob – Exactly.

Jay – Based on the Attorney General the Department of Agriculture doesn’t have what it takes to enforce this. It takes a lawyer or an Attorney General to enforce this as a trespass case. The Department of Ag can’t enforce trespassing of any kind, right?

Faith – Right. So what he’s saying is that changing the language of this law or making some revisions isn’t going to solve the fundamental problem that someone else be it a court of law be it a county regulation or something like that, prohibiting the planting of it who knows what; but it’s not going resolve that fundamental issue.

Jay – So you just remove it. So the Secretary of Ag comes in and says I’m hiring a lawyer to enforce the bamboo trespass law and it comes through us and I’m going to do it then.

Faith – Okay, we’ll do it that way.

Rob – That’s more what I’m saying. I’m trying to think more long-term.

Paul – Long-term than short-term. You're right that makes more sense. When you do a short-term it will roll back down and catch us.

Jay – So let's take it off because we can always come back and put it back on.

Faith – Right, Next year.

Rob – If we get the funding and the right wording and the staffing we could enforce that.

Faith – So, okay do you want to repeat that? You sounded so good Rob.

Rob – Actually the first part you said sounded good.

Faith – Okay, so I make a motion to remove bamboo from the Nuisance Plant Law, all plants with the common name of bamboo that's the way it's stated. To remove that from the Nuisance Plant List.

Rob – Period.

Faith – Yes.

Paul – I second the motion. Is that how we have to do it?

Faith – Right, and then we ask for discussion.

Rob – We don't have to give reasons do we? The motion is simply that—period—and that's it.

Faith – What I will do.

Rob – Your reasons were good.

Faith – What will happen, I will review the decision with the current Secretary of Agriculture. I've already made him aware of my concerns.

Jay – Who is that?

Faith – Austin Short.

Jay – That's right.

Faith – Only till January.

Faith – I will review this with Austin and let him know what the decision was once we vote on it and then consult with our lawyer to see what I need to do to make this official. We'll probably have to have a paper that says official designation or something like that. All in favor of this move say I.

Everyone – I.

Faith – So that's four and we can file the concerns of Bill McAvoy and I can discuss that also with Austin.

Paul – Right, and that's part of the record.

Faith – That will be part of the record. Are there any recommendations or additions to the Nuisance plant list?

Jay – My only recommendation to you is take a picture of the bamboo so that Austin knows that's not pine trees. I'm not sure he's going to recognize anything else.

Faith – He's pretty focused on forestry that's for sure.

Jay – Yes he is.

Faith – If there are no proposed additions is there any additional discussion?

Paul – I guess we're clear on the Porcelainberry?

Faith – That was discussed and decided that putting it on the list was not going solve the problem because it couldn't be enforced.

Paul – Just like what we're running into here.

Faith – It's a law with a lot of issues.

Rob – Since you haven't mentioned it, I guess you haven't had any further request for additions?

Faith – No. We've certainly had requests for the additions to the Noxious Weed Law. I think we've finished with the meeting so thank you gentlemen for showing up.

Meeting adjourned.

